

AMENDED IN SENATE JUNE 18, 2014

AMENDED IN SENATE JUNE 9, 2014

AMENDED IN ASSEMBLY MAY 28, 2014

CALIFORNIA LEGISLATURE—2013–14 REGULAR SESSION

**ASSEMBLY BILL**

**No. 1698**

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**Introduced by Assembly Member Wagner**

February 13, 2014

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An act to amend Section 115 of the Penal Code, relating to falsified public documents.

LEGISLATIVE COUNSEL'S DIGEST

AB 1698, as amended, Wagner. Falsified public records.

Under existing law, a person who knowingly procures or offers any false or forged instrument to be filed, registered, or recorded in any public office within this state, which instrument, if genuine, might be filed, registered, or recorded under any law of this state or of the United States, is guilty of a felony.

This bill would provide that after a person is convicted of a violation of that law, or a plea is entered whereby a charge alleging a violation of that law is dismissed and a waiver is obtained as specified, upon written motion of the prosecuting agency, the court, after a hearing, as specified, is required to issue a written order that the false or forged instrument be adjudged void ab initio if the court determines that an order is appropriate under applicable law. The bill would require the order to state whether the instrument is false or forged, or both false and forged, and describe the nature of the falsity or forgery. The bill would require a copy of the instrument to be attached to the order, *at the time the order is issued by the court*, and a certified copy of the

order to be filed, registered, or recorded *at the appropriate public office by the prosecuting agency*. The bill would require a prosecuting agency to follow specific procedures for filing the motion, including, but not limited to, requirements to provide notice to interested parties, ~~and including, when a criminal action has commenced that may result in adjudications against the false or forged instrument or the property affected by the false or forged instrument.~~ The bill would require a court to take specified procedural actions.

Vote: majority. Appropriation: no. Fiscal committee: no.  
State-mandated local program: no.

*The people of the State of California do enact as follows:*

- 1 SECTION 1. Section 115 of the Penal Code is amended to  
2 read:
- 3 115. (a) Every person who knowingly procures or offers any  
4 false or forged instrument to be filed, registered, or recorded in  
5 any public office within this state, which instrument, if genuine,  
6 might be filed, registered, or recorded under any law of this state  
7 or of the United States, is guilty of a felony.
- 8 (b) Each instrument which is procured or offered to be filed,  
9 registered, or recorded in violation of subdivision (a) shall  
10 constitute a separate violation of this section.
- 11 (c) Except in unusual cases where the interests of justice would  
12 best be served if probation is granted, probation shall not be granted  
13 to, nor shall the execution or imposition of sentence be suspended  
14 for, any of the following persons:
- 15 (1) Any person with a prior conviction under this section who  
16 is again convicted of a violation of this section in a separate  
17 proceeding.
- 18 (2) Any person who is convicted of more than one violation of  
19 this section in a single proceeding, with intent to defraud another,  
20 and where the violations resulted in a cumulative financial loss  
21 exceeding one hundred thousand dollars (\$100,000).
- 22 (d) For purposes of prosecution under this section, each act of  
23 procurement or of offering a false or forged instrument to be filed,  
24 registered, or recorded shall be considered a separately punishable  
25 offense.
- 26 (e) (1) After a person is convicted of a violation of this section,  
27 or a plea is entered whereby a charge alleging a violation of this

1 section is dismissed and waiver is obtained pursuant to People v.  
2 Harvey (1979) 25 Cal.3d 754, upon written motion of the  
3 prosecuting agency, the court, after a hearing described in  
4 subdivision (f), shall issue a written order that the false or forged  
5 instrument be adjudged void ab initio if the court determines that  
6 an order is appropriate under applicable law. The order shall state  
7 whether the instrument is false or forged, or both false and forged,  
8 and describe the nature of the falsity or forgery. A copy of the  
9 instrument shall be attached to the order *at the time it is issued by*  
10 *the court* and a certified copy of the order shall be filed, registered,  
11 ~~or recorded~~ *recorded at the appropriate public office by the*  
12 *prosecuting agency.*

13 (2) (A) If the order pertains to a false or forged instrument that  
14 has been recorded with a county recorder, an order made pursuant  
15 to this section shall be recorded in the county where the affected  
16 real property is located. The order shall also reference the county  
17 recorder's document recording number of any notice of pendency  
18 of action recorded pursuant to paragraph (2) of subdivision (f).

19 (B) As to any order, notice of pendency of action, or withdrawal  
20 of notice of pendency of action recorded pursuant to this section,  
21 recording fees shall be waived pursuant to Section 27383 of the  
22 Government Code.

23 (f) A prosecuting agency shall use the following procedures in  
24 filing a motion under subdivision (e):

25 (1) Within 10 calendar days of filing a criminal complaint or  
26 indictment alleging a violation of this section, the prosecuting  
27 agency shall provide written notice by certified mail to all parties  
28 who have an interest in the property affected by the false or forged  
29 instrument, or in the instrument itself, including those described  
30 in paragraph (5).

31 (2) (A) Within 10 calendar days of filing a criminal complaint  
32 or indictment alleging a violation of this section, the prosecuting  
33 agency shall record a notice of pendency of action in the county  
34 in which the affected real property is located.

35 (B) Within 10 calendar days of the case being adjudicated or  
36 dismissed without obtaining an order pursuant to subdivision (e),  
37 the prosecuting agency shall record a withdrawal of the notice of  
38 pendency of action in the county where the affected real property  
39 is located.

(3) The written notice and notice of pendency of action described in paragraphs (1) and (2) shall inform the interested parties that a criminal action has commenced *that may result in adjudications* against the *false or forged instrument or the* property affected by the false or forged instrument, ~~or the instrument, or both as applicable,~~ and shall notify the interested parties of their right to be heard if a motion is brought under subdivision (e) to void the false or forged instrument. The notice shall state the street address, if available, and the legal description of the affected real property.

(4) Failure of the prosecuting agency to provide written notice or record a pendency of action as required under paragraphs (1) and (2) within 10 calendar days shall not prevent the prosecuting agency from later making a motion under subdivision (e), but the court shall take the failure to provide notice or record a pendency of action as required under paragraphs (1) and (2) as reason to provide any interested parties additional time to respond to the motion. Failure of the prosecuting agency to so notify interested parties under this subdivision or record a pendency of action as required under paragraphs (1) and (2) within 10 calendar days shall create a presumption that a finding as described in paragraph (9) is necessary to protect the property rights of the interested party or parties.

(5) If the instrument sought to be declared void involves real property, “interested parties” include, but are not limited to, all parties who have recorded with the county recorder in the county where the affected property is located any of the following: a deed, lien, mortgage, deed of trust, security interest, lease, or other instrument declaring an interest in, or requesting notice relating to, the property affected by the false or forged instrument as of the date of the filing of the criminal complaint or indictment.

(6) Any party not required to be noticed under paragraph (1) or (5) who nonetheless notifies the prosecuting agency in writing of the party’s desire to be notified if a motion is brought under subdivision (e) to void the false or forged instrument shall be treated as an interested party as defined in paragraph (1) or (5).

(7) The court shall set a hearing for the motion brought by the prosecuting agency under subdivision (e) no earlier than 90 calendar days from the date the motion is made. The prosecuting agency shall provide a copy by certified mail of the written motion and a notice of hearing to all interested parties described in

1 paragraphs (1), (5), or (6), and all other persons who obtain an  
2 interest in the property prior to recordation of notice of pendency  
3 of action no later than 90 days before the hearing date set by the  
4 court. The notice shall state the street address, if available, and the  
5 legal description of the affected real property.

6 (8) At a hearing on a motion brought by the prosecuting agency  
7 under subdivision (e), the defendant, prosecuting agency, and  
8 interested parties described in paragraphs (1), (5), or (6), shall have  
9 a right to be heard and present information to the court. No party  
10 shall be denied a right to present information due to a lack of notice  
11 by the prosecuting agency or failure to contact the prosecuting  
12 agency or the court prior to the hearing.

13 (9) (A) At a hearing on a motion brought by a prosecuting  
14 agency under subdivision (e), if the court determines that the  
15 interests of justice or the need to protect the property rights of any  
16 person or party so requires, including, but not limited to, a finding  
17 that the matter may be more appropriately determined in a civil  
18 proceeding, the court may decline to make a determination under  
19 subdivision (e).

20 (B) If, prior to the hearing on the motion, any person or party  
21 files a quiet title action that seeks a judicial determination of the  
22 validity of the same false or forged instrument that is the subject  
23 of the motion, or the status of an interested party as a bona fide  
24 purchaser of, or bona fide holder of an encumbrance on, the  
25 property affected by the false or forged instrument, the court may  
26 consider that as an additional but not dispositive factor in making  
27 its determination under subdivision (e); provided, however, that a  
28 final judgment previously entered in that quiet title action shall be  
29 followed to the extent otherwise required by law.

30 (g) As used in this section, “prosecuting agency” means a city  
31 attorney, a district attorney, the Attorney General, or other state  
32 or local agency actively prosecuting a case under this section.

33 (h) An order made pursuant to subdivision (e) shall be  
34 considered a judgment, and subject to appeal in accordance with,  
35 paragraph (1) of subdivision (a) of Section 904.1 of the Code of  
36 Civil Procedure.